U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5437970

Date: FEB. 13, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a coach of [redacted] Jiu Jitsu [redacted], seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

III. ANALYSIS

A. Motion to Reconsider

On motion, the Petitioner does not identify any specific error of law or policy in our appellate decision. Instead, the Petitioner seeks essentially a new adjudication of the petition, under a different combination of regulatory criteria and relying on new claims concerning facts previously in the record. Therefore, the motion does not meet the regulatory requirements for a motion to reconsider. Accordingly, we must dismiss that motion.

B. Motion to Reopen

A motion to reopen or to reconsider serves a limited purpose; it is not a mechanism for seeking a complete re-hearing on the merits of the underlying petition.

The Petitioner did not previously claim to have received a major, internationally recognized award. Instead, he relied upon alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), as well as the comparable evidence clause. In our appellate decision, we explained why the Petitioner had not established that he can rely on comparable evidence:

> General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted. The fact that the Petitioner did not submit documentation that fulfills at least three is not evidence that a jiu-jitsu coach could not do so. . . . Furthermore, the Petitioner has not explained or established how the documentation he has provided is comparable to the listed criteria at 8 C.F.R. § 204.5(h)(3).

(Footnote omitted.) On motion, the Petitioner again invokes the comparable evidence clause relating to several eligibility criteria. We will address each instance as appropriate.

On motion, the Petitioner states: "under 8 CFR Section 204.5(h)(4), the petitioner may submit comparable evidence of eligibility if the standards under 8 CFR Section 204.5(h)(3) do not readily apply to him." This assertion, however, is a misreading of 8 C.F.R. § 204.5(h)(4). That regulation allows a petitioner to submit comparable evidence if the standard regulatory criteria "do not readily apply to the beneficiary's *occupation*." If the standard criteria *do* readily apply to the occupation, then an individual petitioner's personal inability to meet those criteria does not trigger the comparable evidence clause.

The Petitioner contends that "coaches of [redacted] do not have an established 'Major Internationally Recognized Award,'" and asks us to consider the performance of his most successful pupils as comparable evidence of such an award. The "comparable evidence" clause, however, applies only to the ten lesser evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), not to the major, internationally recognized award. *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 12 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

Lacking a major, internationally recognized award, the Petitioner initially claimed to have met six of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x):

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and

- (x), Commercial success in the performing arts.

The Director found that the Petitioner had satisfied only one of the claimed criteria, relating to published material about the Petitioner. In our appellate decision, we determined that the Petitioner had not satisfied any of the claimed criteria. On motion, the Petitioner claims to have met six criteria, either directly or through comparable evidence:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (viii), Leading or critical role for distinguished organizations or establishments.

Because a motion does not involve a full readjudication of the underlying petition, we will focus on the newly-submitted evidence, along with any arguments that we erred in our prior decision.

We begin with the criterion that the Director initially granted.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

As we noted in our prior decision, the Petitioner was the subject of two articles on the website of a local ABC affiliate. We acknowledged that the "articles are about the Petitioner in his capacity as a jiu-jitsu coach," but we concluded that "the record lacks evidence demonstrating that abc-7.com is a professional or major trade publication or other major medium."

On motion, the Petitioner submits background information and asserts that the affiliate "is considered a major media in [redacted] parts of Florida." The ABC network, as a whole, qualifies as major media, but the Petitioner does not claim or establish that ABC has covered his work at the network level. Individual affiliate stations, by design, reach a significantly more limited audience. The Petitioner's new evidence does not establish that the local affiliate's website constitutes major media, and therefore the Petitioner has not overcome our prior determination to that effect.

Furthermore, the article focuses on the Petitioner's daughter, identifying the Petitioner as the child's father and coach, with no mention of his other coaching work.

The Petitioner asks that we consider published materials about his students as comparable evidence, but the Petitioner does not show that this criterion does not readily apply to his occupation. Without meeting this threshold, the Petitioner has not opened the door to consideration of comparable evidence here.

We will not disturb our prior finding that the Petitioner has not been the subject of published material in professional or major trade publications or other major media, relating to his work.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

Previously, the Petitioner had claimed to satisfy this criterion through his third degree black belt from [redacted] and membership in the Jiu-Jitsu Federation of State of [redacted]. We found that the Petitioner had not documented [redacted]'s membership requirements, and had not shown that his black belt constitutes membership in an association.

On motion, the Petitioner again invokes [redacted] and [redacted], newly claiming that his employment as a coach at [redacted] and his designation as an authorized representative of [redacted] are each comparable to qualifying memberships. The Petitioner contends that the comparable evidence clause applies because [redacted] does not have formal organizations that simply recognize and praise achievements and coaches." A qualifying association *requires* outstanding achievements of its members, but the purpose of such an association is not to "simply recognize and praise achievements."[1]

The Petitioner does not establish that employment with [redacted] or performing a function within [redacted] are comparable to membership in an association. Therefore, we need not reach the additional issue of whether those entities require outstanding achievements of their members.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner had previously claimed that his work with the [redacted] Sheriff's Office constituted a leading and critical role, but we did not find that the Petitioner had satisfied the criterion. On motion, rather than show that we erred in that finding, the Petitioner newly claims to have performed in leading or critical roles as a coach and instructor at [redacted] and as an authorized representative of [redacted]

In this way, the Petitioner does not contend that we erred in our determination concerning the [redacted] Sheriff's office, nor does the Petitioner introduce new evidence relevant to that determination. Rather, the Petitioner seeks consideration of an entirely new claim, albeit one that relates to information already in the record in a different context.

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[1] The aforementioned USCIS policy memorandum offers the example of the U.S. National Academy of Sciences (NAS). USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6. The NAS is not simply a "hall of fame" that compiles a list of top scientists. Rather, the NAS actively promotes science through functions such as publishing a scholarly journal and serving as a scientific advisory body. *See* http://www.nasonline.org/about-nas/mission/ (last visited Feb. 12, 2020).

It is significant that a motion to reopen relates to the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). In this instance, the latest decision is not the denial of the petition, but our dismissal of the appeal from that denial. Thus, a motion filed at this stage of the proceeding must seek to remedy flaws in the appellate decision, rather than the earlier denial. A post-appellate motion to reopen is not the proper forum to advance what amount to entirely new claims of eligibility that the Petitioner did not advance at any prior stage in the proceeding.[2]

We note the Petitioner's submission of letters discussing the claimed importance of the Petitioner's roles with [redacted] and [redacted], but we also note the lack of documentary evidence that could be expected to exist independently of this proceeding. For example, to establish the reputations of [redacted], its officials, and several athletes, the Petitioner submits printouts from the [redacted] Heroes website, but the Petitioner does not submit evidence from that website about himself.

This omission is not a minor issue. For example, a letter from athlete [redacted] indicates that the Petitioner played a significant role in her training, but [redacted]'s biography on [redacted] Heroes does not mention the Petitioner at all, and neither does the accompanying "Lineage" that traces the pedigree of her trainers back to the 19th century.

It is of particular concern that, on motion, the Petitioner claims that his leading roles include serving as head coach at [redacted], arguably the flagship school for [redacted], but the first letters from [redacted] officials only attested to his black belt. When weighing the credibility of this new claim to have been a head coach at [redacted], we take into consideration that the Petitioner withheld this information until the motion stage, and the absence of documentary support for that claim.

The Petitioner repeats and expands upon prior assertions regarding his status as an authorized representative of [redacted], stating: "Although other individuals may be authorized to teach [redacted] Jiu-Jitsu, [the Petitioner] is the only one authorized to promote and certify through the [redacted]; this nuance is important since it establishes the exclusivity and importance of [the Petitioner's] role." A letter from the president of [redacted] in the Petitioner's initial submission called the Petitioner "the only Third Degree Black Belt . . . [with] the recommendation of the [redacted] to teach in [redacted], Florida, USA." In response to a request for evidence, the same official stated that the Petitioner "is the INTERNATIONAL representative of this entity and the only one authorized to promote and certify throughout the United States of America and beyond."

As discussed above, the record lacks documentation to establish the significance of this role. The Petitioner does not dispute that there are several schools in the United States and elsewhere teaching [redacted] Jiu Jitsu as developed at [redacted], and the record does not establish the Petitioner's actual duties and responsibilities as [redacted]'s international representative. It is not the title of the alien's role, but rather the alien's performance in the role that determines whether the role is (or was) critical. USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

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[2] We note that a petitioner abandons issues not raised on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

In this respect, it is significant that, while the Petitioner submits new background information about [redacted] and other [redacted] organizations, these materials do not identify the Petitioner as [redacted]'s international representative with exclusive authority to promote and certify the organization or its methods.

The Petitioner's submission on motion does not establish his performance in a leading or critical role for organizations or establishments with a distinguished reputation.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner previously submitted letters indicating that the Petitioner's coaching activities had directly and indirectly affected thousands of athletes. In our appellate decision, we stated:

> The [submitted] letters do not provide sufficient information, nor does the record include adequate corroborating documentation, to demonstrate how the Petitioner's work as a jiu-jitsu coach has been a contribution of major significance to the field. . . . Letters that lack specifics and make broad, unsupported assertions do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.

On motion, the Petitioner submits new letters from members of the [redacted] family (considered central figures in [redacted]) and from an athlete whom the Petitioner repeatedly identifies as an "Olympic Gold Medalist," although the medals are from "Junior Olympic" events, rather than the international Olympic Games. (The Petitioner acknowledges that the medals were in judo rather than in [redacted]) The letters in question do not specifically identify any original contributions of major significance; they indicate only that the Petitioner has been a skilled and talented coach for many students over the years. Success and expertise are not intrinsically original contributions of major significance.

As noted above, the Petitioner newly claims comparable evidence relating to two additional criteria on motion, (1) documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor (8 C.F.R. § 204.5(h)(3)(i)), and (2) evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. (8 C.F.R. § 204.5(h)(3)(iv)).

As we have already observed, a motion to reopen serves a limited purpose, and it is not an opportunity for a petitioner to seek a full rehearing on the record or to make new claims that the Petitioner could have made, but did not make, at any prior time. The attempt to pursue new lines of reasoning or evidence cannot establish that the outcome of the appeal should have been different.

Because the Petitioner did not establish that he meets any of the four criteria discussed above, the remaining two criteria cannot suffice to establish eligibility, even if we were to grant them now. Therefore, we reserve the remaining issues.[3]

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).